

**LEMON GROVE CITY COUNCIL  
AGENDA ITEM SUMMARY**

Item No.   2    
Mtg. Date February 20, 2018  
Dept. City Attorney's Office

**Item Title: ORDINANCE ADDING CHAPTER 2.36 (PLANNING COMMISSION) TO THE LEMON GROVE MUNICIPAL CODE**

**Staff Contact:** [ James P. Lough, City Attorney ]

**Recommendation:**

Introduce Ordinance No. 448 (**Attachment B**) adding Chapter 2.36 (Planning Commission) to the Lemon Grove Municipal Code. Determine whether to add **Attachment C** (Option One) or **Attachment D** (Option Two) as the text of the Ordinance.

**Item Summary:**

[This Ordinance adds Chapter 2.36 to the Lemon Grove Municipal code. Once the Ordinance is effective (adopted plus thirty days), the Planning Commission is established. Further ordinance changes will be needed to clarify the role of the Commission and the breadth of its authority.]

**Fiscal Impact:**

Approximately \$45,000.00 per year in staff costs. Staff estimates approximately 60 percent of this expense will be reimbursable. This is a cost estimate.

**Environmental Review:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review         | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section [       ] | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> None                     | <input type="checkbox"/> Newsletter article   | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting |   |

**Attachments:**

- A. Staff Report
- B. Ordinance No. 448
- C. New Text of Chapter 2.36
- D. Former Text of Chapter 2.08



## LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 2

Mtg. Date February 20, 2018

Item Title: **ORDINANCE ADDING CHAPTER 2.36 (PLANNING COMMISSION) TO THE LEMON GROVE MUNICIPAL CODE**

Staff Contacts: Lydia Romero, City Manager

James P Lough, City Attorney

### Background:

On December 5, 2017, the City Council gave direction to Staff to bring back legislation to reinstitute the Planning Commission. Currently, the City Council is the official “planning agency” of the City. State Planning Law allows the Council to establish a Planning Commission to hear appeals of land use matters and to recommend changes in the General Plan to the City Council. Once effective, this Ordinance allows the City Council to appoint five citizens of the community to serve as unpaid volunteers for staggered terms of office.

On January 16, 2018, the Council discussed a proposed ordinance to reinstate the Planning Commission. At that time, the City Council gave direction and asked the return to the Council on February 20, 2018.

### Analysis:

This Staff Report lays out two options. Option One is the draft ordinance presented at the January 2018 Council meeting. Option Two is the previous language in the Lemon Grove Municipal Code that established the Planning Commission in 1978 with amendments late as 1999.

#### Option One:

Under Option One, Ordinance No. 448 adds a new Chapter to the Lemon Grove Municipal Code. Chapter 2.36 (Planning Commission) reestablishing a Planning Commission to hear land use and planning matters on appeal from a staff determination or as the first approval body. LGMC Chapter 17 will need to be amended to provide for this additional land use process.

#### Creation and Appointment:

Section 2.36.010 creates the Planning Commission as the “planning agency” authorized by state law. It is recommended that the Commission have five members, which is the minimum allowed by law. The Council is required to make the appointment of members who are registered voters and residents in the City of Lemon Grove.

#### Terms of Office:

The initial appointments will be for staggered terms so that no more than two commissioner terms will expire in the same year. Section 2.36.030 sets the term of office at four years, expiring on June 30<sup>th</sup>. Initially, two Commissioners will be appointed for a four-year term. The other three

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commissioners will be appointed for one, two and three-year initial terms. The Council can adjust the terms so that at least one commissioner term expires at the end of each fiscal year. Thereafter, all commissioners will serve full four-year terms. Vacancies prior to the expiration of a term can be made by the Council to fill the remainder of the unexpired term. If an appointment is not made prior to the expiration of a term of office, the officeholder will serve until her successor is appointed and qualified.

## Ethics:

Each Commissioner must be a resident and registered voter in the City of Lemon Grove. Within thirty days of assuming office, commissioners must file a full Conflict of Interest Form (Form 700) for the California Fair Political Practices Commission ("FPPC"). Thereafter, they must file an annual update 700 Form. If they have a conflict of interest under the FPPC rules, they must abstain from any participation in the conflicted item. Campaign contributions to appointed Planning Commissioners trigger the conflict rules. Common law conflict ("bias") rules apply to commissioners as do the anti-contracting rules under Government Code Section 1090. The commissioners cannot hold another office where the duties are incompatible with the office of Planning Commissioner. In the past, the California Attorney General has opined that a sitting school board member with overlapping jurisdictional boundaries cannot simultaneously serve as a Planning Commissioner. The same restriction would likely apply to a sitting Board Member of the local water district.

## Powers and Duties:

The Planning Commission, under state law, is the City's planning agency. The Government Code places the following responsibilities on a Planning Commission:

65103. Each planning agency shall perform all of the following functions:

- (a) Prepare, periodically review, and revise, as necessary, the general plan.
- (b) Implement the general plan through actions including, but not limited to, the administration of specific plans and zoning and subdivision ordinances.
- (c) Annually review the capital improvement program of the city or county and the local public works projects of other local agencies for their consistency with the general plan, pursuant to Article 7 (commencing with Section 65400).
- (d) Endeavor to promote public interest in, comment on, and understanding of the general plan, and regulations relating to it.
- (e) Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan.
- (f) Promote the coordination of local plans and programs with the plans and programs of other public agencies.
- (g) Perform other functions as the legislative body provides, including conducting studies and preparing plans other than those required or authorized by this title.

Typically, a Planning Commission reviews land use legislation and makes recommendations to City Council for policy and development projects such as zoning ordinances, both text and map

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changes, General and Specific Plan amendments and major subdivisions with five lots or units or more. For some quasi-judicial matters, such as Temporary or Minor Use Permits, it is the approving body for the City. At present, hearings for Conditional Use Permits and Variances are heard by the City Council. Once the Planning Commission is established these hearings will first be conducted by the Planning Commission with the ability to appeal to the City Council. The rest will automatically be sent to the City Council with the Planning Commission adopting a Council recommendation rather than a final decision.

The language of the proposed Section 2.36.060 states that the Planning Commission hears all appealable decisions as follows:

Notwithstanding any other provision to the contrary, the Planning Commission shall be the initial appeal body for all appealable staff decisions under Lemon Grove Municipal Code Titles 15 (Buildings and Construction), 16 (Subdivisions), 17 (Zoning) and 18 (Citywide Regulations).

This Ordinance applies general rules to the appellate process.

The City Council will need to decide if the Planning Commission should hear land use and planning matters on appeal from a staff determination, as the first approval body (e.g., Planned Development Permits, Conditional Use Permits, Variances) with appeal rights to the City Council and/or as a recommending body to the City Council (e.g., Zoning Ordinance and General Plan Amendments and Tentative Maps). Title 17 is required to be amended to reestablish previous Planning Commission responsibilities.

Staff will provide an overview of options for Planning Commission responsibilities and authority and staff recommendations for City Council to review and consider updating Title 17 appropriately. These options will include Development Services Director, Planning Commission and City Council reviews, recommendations and/or decisions on appeals, revocations, planning permits, General and Specific Plan and Zoning Ordinance Amendments, the General Plan Annual Progress Report and the Capital Improvement Program. Amnesty for permits in process and the functions of the Community Advisory Commission will also be considered. Because Measure "V" was adopted when there was no Planning Commission, the Planning Commission will not hear applications for Conditional Use Permits or Zoning Clearances or Appeals under the initiative.

Organization and Administrative Issues:

Ordinance No. 448 establishes governance procedures that require the Commission to follow applicable state planning procedures and open meeting rules. The Government Code provides some guidance for the operation of the Commission. LGMC Section 2.36.080 allows the Commission to adopt its own operating procedure. If they do not adopt a rule to cover a particular

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situation, it can rely on the City Council rules in Title 2 of the LGMC. Any rules the Planning Commission adopts must be consistent with the LGMC and State law.

Under Option One, the Planning Commissioners do not get paid a per meeting stipend. However, training costs and expenses may be paid only if authorized by the City Council.

Commissioners will vacate their office if they have three consecutive unexcused absences. (LGMC Section 2.36.090.) A forfeiture of office will be filled by the Council using the normal appointment process to fill the unexpired term.

Section 2.36.100 sets decorum rules. In absence of a vote of the Commission, the Chair will have the authority to control the meeting if they do so in a manner consistent with law.

Lemon Grove relocation appeals board:

Each jurisdiction with the power of eminent domain must have an appeals board that allows a displaced property owner to challenge the amount of relocation benefits paid by the jurisdiction (City). The only times this procedure was ever used in Lemon Grove was by the former Redevelopment Agency for the realignment and the Home Depot projects. It is extremely unlikely that the City will ever need to use this procedure. However, the relocation appeals procedures should be put in place to comply with law if it is ever needed.

## OPTION TWO:

Option Two incorporates the previous language found in the code prior to the elimination of the Planning Commission in 2015. This prior language is found in Attachment "D". Upon adoption, the Council would have to make all appointments and the following section would be added to the Ordinance, as Section 3, to allow for the initial appointment of staggered terms as follows:

Section 3: The initial five members shall assume office when they are appointed and qualified for office. The initial appointments shall be of three members for full terms of three years. The other two initial appointments will be made for partial terms of one and two years respectively allowing for staggered terms.

This section would establish a three-year rotation for appointments as previously established by the City Council when it originally formed the Commission. The Ordinance in Attachment "C" would incorporate this new section three and bring back former Chapter 2.08 (Planning Commission) as the new Chapter 2.36.

## Environmental Impact:

This Ordinance is not a project as defined under the California Environmental Quality Act. There are no physical changes made to the environment by this Agenda item.

## Costs

Staff estimates that the cost per Planning Commission item is approximately \$4,000.00 and estimates 12 items per year on average based on an average over the last two and one-half years. This includes staff costs for Planning Commission training, project inquiries from the general public, applicants and Planning Commissioners, interdepartmental coordination, staff reports, presentations, environmental review, public noticing, agenda preparations and setup, public hearing preparation and the preparation of minutes. In total, approximately \$45,000.00 per

## Attachment A

year is estimated in staff time and costs. Staff estimates approximately 60 percent of this expense will be reimbursable. At this time, staff estimates an additional 10 to 30 hours of additional staff time would be needed to support each Planning Commission item. Staff will provide the City Council with a more refined cost estimate, staffing and processing impact. ]

### **Conclusion:**

Staff recommends that the City Council choose Option One, Option Two or a combination of the two options. Staff further recommends that the City Council introduce Ordinance No. 448 by title and set the matter for adoption at the next regular City Council meeting. Further, that the City Council authorize publication of a summary of the Ordinance in a newspaper of general circulation.





## Attachment B

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA, ADDING CHAPTER 2.36 (PLANNING COMMISSION) TO THE LEMON GROVE MUNICIPAL CODE**

**WHEREAS**, the City Council of the City of Lemon Grove has determined to reestablish the Planning Commission to act as the Planning Agency for the City pursuant to California Government Code Section 65101; and

**WHEREAS**, the Planning Commission shall have five Lemon Grove residents who are registered voters as members for terms of office as specified herein; and

**WHEREAS**, the Planning Commission shall have the legal authority to review, approve and recommend matters as herein allowed in a manner consistent with the California Local Planning laws; and

**WHEREAS**, the City Council finds that the Planning Commission shall also serve as the Lemon Grove relocation appeals board.

**NOW THEREFORE**, the City Council of the City of Lemon Grove does ordain as follows:

**Section 1.** The foregoing recitals are true and correct.

**Section 2.** This Ordinance adds Chapter 2.36 (Planning Commission) as fully set forth in Attachment C, which is fully incorporated herein by reference.

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## Attachment B

**Section 3.** This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall publish the title thereof, as a summary as required by state law.

**INTRODUCED** by the City Council on February 20, 2018. **PASSED AND ADOPTED** by the City Council of the City of Lemon Grove, State of California, on \_\_\_\_\_ by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Racquel Vasquez, Mayor

Attest: \_\_\_\_\_

Susan Garcia, City Clerk

Approved as to form:

\_\_\_\_\_  
James P. Lough, City Attorney

## **Attachment C**

### **OPTION ONE: Lemon Grove Municipal Code Chapter 2.36 – Planning Commission**

#### **2.36.010 - Creation—Members—Vote.**

Pursuant to the provisions of California Government Code Section 65101, as amended, the Lemon Grove Planning Commission (“Planning Commission”) is hereby created and established to consist of five members. All members shall be resident electors of the city. Each member shall be entitled to vote on matters before the Commission.

#### **2.36.020 - Appointment.**

The members of the Planning Commission shall be appointed by the City Council.

#### **2.36.030 - Terms of office.**

The term of office for each member shall be four years, which term shall commence on July 1 and terminate on June 30, four years thereafter. Members' terms shall be maintained so that no more than two terms shall expire in any given year.

The initial five members shall assume office when they are appointed and qualified for office. The initial appointments shall be of two members for full terms of four years. The other three initial appointments will be made for partial terms of one, two and three years respectively allowing for staggered terms. The Council shall lengthen or shorten the initial terms so that each term expires on June 30.

#### **2.36.040 - Filling vacancies.**

Each vacancy on the Planning Commission shall be filled for the unexpired portion of the term vacated in the manner set forth in Sections 2.36.020 and 2.36.030.

#### **2.36.050 - Expiration of term.**

## Attachment C

In the event the reappointment in the manner set forth in Section 2.60.020 is not made upon the expiration of a term of office, a member shall continue in office until reappointment or until his successor is appointed and qualified.

### 2.36.060 – Ethics and Statement of economic interests.

Each appointee shall comply with the provisions of the Conflict of Interest Code of the City of Lemon Grove and the California Political Reform Act of 1974, as amended. Planning Commissioners shall abstain from any participation in matters in which they have a conflict of interest as determined by law.

### 2.36.060 - Powers and duties.

The Planning Commission shall have and is hereby vested with all the powers and duties provided by this Chapter and amendments thereto, and such other powers and duties as may be conferred upon the Planning Commission by all laws of the State of California and the City Council. The Planning Commission shall follow the Ralph M. Brown Act Open Meeting Law when holding its meetings. It shall draft and administer the Lemon Grove General Plan in a manner consistent with State Planning laws and regulations. Notwithstanding any other provision to the contrary, the Planning Commission shall be the initial appeal body for all appealable staff decisions under Lemon Grove Municipal Code Titles 15 (Buildings and Construction), 16 (Subdivisions), 17 (Zoning) and 18 (Citywide Regulations). The City Council shall hear appeals from Planning Commission decisions.

### 2.36.070 – Travel and Training Expenses.

All members shall be paid such allowance for travel and training expenses incurred in their attendance if the City Council has authorized travel and training.

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### 2.36.080 - Organization—Rules and procedures.

Pursuant to California Government Code Section 65103, the Planning Commission shall establish such rules, regulations, and procedures not inconsistent with this chapter for the transaction of business and shall keep a public record of its resolutions, transactions, findings and determinations. The Commission may adopt its own procedures in a manner that do not conflict with the Lemon Grove Municipal Code or applicable California laws and regulations. In the absence of any adopted procedures, the Planning Commission shall follow the procedures established for the City Council under Lemon Grove Municipal Code Chapter 2.14, as applicable.

### 2.36.090 - Absence from meetings.

If any member of the Planning Commission absents himself from three consecutive regular meetings of the Planning Commission without permission secured before the third meeting or absence granted by the vote of not less than three members of the Commission, her office shall become vacant, and shall be filled as any other vacancy as provided for herein.

### 2.36.100 - Decorum at meetings.

Members of the Commission and persons in attendance at meetings of the Commission shall conduct themselves in an orderly manner and in compliance with the Commission's rules or, in the absence of such rules, with the rulings of the presiding officer respecting applause, noise making, and conduct shall apply in a manner consistent with law.

### 2.36.110 – Lemon Grove relocation appeals board.

The Planning Commission shall also act as the "Lemon Grove relocation appeals board" and shall have the power when it acts in that capacity as provided by the by-laws for the relocation appeals board and shall carry out its duties and obligations pursuant to said by-laws. Said by-

## **Attachment C**

laws shall be adopted at the first meeting of the Planning Commission acting as the relocation appeals board and shall not thereafter be amended without the prior approval of the City Council.

### **OPTION TWO: Former Chapter 2.08 (1978-1999 version)**

#### 2.08.010 Creation.

There is created in the city a planning commission referred to in this chapter as the commission.  
(Ord. 52 § 1, 1980; Ord. 23 § 1, 1978)

#### 2.08.020 Membership.

The commission shall consist of three permanent members who shall be residents of the city.  
(Ord. 190, 1991)

#### 2.08.030 Votes.

Each member of the commission shall have one vote. (Ord. 52 § 3, 1980; Ord. 23 § 3, 1978)

#### 2.08.040 Terms.

Members of the commission shall be appointed by the city council and shall serve for a period of three years, or until reappointment or appointment of a successor. (Ord. 294, 1999; Ord. 190, 1991)

#### 2.08.050 Vacancies.

Vacancies in the commission occurring other than by expiration of the term shall be filled by appointment by the council upon recommendation by the Mayor. (Ord. 52 § 7, 1980; Ord. 23 § 7, 1978)

#### 2.08.060 Resignation upon unexcused absence.

Absence from three consecutive regular meetings may be deemed to constitute a resignation of such member unless excused by the City Council. Unless an absence is excused, the position shall be declared vacant. (Ord. 52 § 8, 1980; Ord. 23 § 8, 1978)

#### 2.08.070 Quorum.

Three voting members shall constitute a quorum at any meeting. (Ord. 52 § 9, 1980; Ord. 23 § 9, 1978)

#### 2.08.080 Compensation.

## Attachment D

Members will be compensated at a rate established by the city council. (Ord. 191, 1991)

### 2.08.090 Powers and duties.

The commission shall have all of the powers and duties established by state law, and by ordinances which the Council may enact. (Ord. 52 § 11, 1980; Ord. 23 § 10, 1978)

### 2.08.100 Rules and regulations.

The commission may prepare and adopt rules and regulations for the internal government of its business and designate the time and place for holding meetings. (Ord. 52 § 12, 1980; Ord. 23 § 11, 1978)

### 2.08.110 Plans.

It is the duty of the commission to adopt a general plan, as defined by state law, for the physical development of the city and to make such other plans, studies and recommendations as it may deem necessary to insure an orderly and beneficial development of the city. (Ord. 52 § 13, 1980; Ord. 23 § 12, 1978)